

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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RAHMEEK YOUNGER,

Plaintiff,

-against-

THE CITY OF NEW YORK, POLICE OFFICER JOSE M.  
SANTIAGO, Shield No. 30357, POLICE OFFICER  
DENNIS W. HAYS, Shield No. 18716, POLICE  
OFFICER JONATHAN FOLEY, Shield No. 4895, and  
SGT. BENJAMIN BENSON, Shield No. 90342,

Defendants.

**ANSWER TO THE  
COMPLAINT ON BEHALF  
OF DEFENDANTS CITY,  
SANTIAGO, BENSON AND  
FOLEY**

Jury Trial Demanded

07 CV 6634 (JGK)

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Defendants City of New York, Santiago, Foley and Benson,<sup>1</sup> by their attorney,  
Michael A. Cardozo, Corporation Counsel of the City of New York, for their answer to the  
complaint, respectfully allege, upon information and belief, as follows:

1. Deny the allegations set forth in paragraph "1" of the complaint, except  
admit that plaintiff purports to bring this action as stated therein.
2. Deny the allegations set forth in paragraph "2" of the complaint.
3. Deny the allegations set forth in paragraph "3" of the complaint, except  
admit that plaintiff purports to invoke the jurisdiction of this Court as stated therein.
4. Deny the allegations set forth in paragraph "4" of the complaint, except  
admit that plaintiff purports to invoke the pendent jurisdiction of this Court as stated therein.

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<sup>1</sup> On January 15, 2008, defendant Dennis Hays received an extension by which to answer or otherwise respond to the complaint until February 15, 2008.

5. Deny the allegations set forth in paragraph “6” of the complaint, except admit that a document purporting to be a notice of claim was received by the Office of the Comptroller.

6. Deny the allegations set forth in paragraph “6” of the complaint, except admit that the purported claims have not been settled or adjusted.

7. Deny the allegations set forth in paragraph “7” of the complaint, except admit that this action was filed on July 24, 2007, and that plaintiff purports to proceed as stated therein.

8. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “8” of the complaint.

9. Deny the allegations set forth in paragraph “9” of the complaint, except admit that defendants Santiago, Benson, and Foley are employed by the City of New York, and that defendant Hays was employed by the City of New York and that plaintiff purports to proceed as stated therein.

10. Deny the allegations set forth in paragraph “10” of the complaint, except admit that defendants Santiago, Hays, Foley and Benson were assigned to the 90<sup>th</sup> Precinct or or about June 28, 2006.

11. Deny the allegations set forth in paragraph “11” of the complaint, except admit that the City of New York is a municipal corporation duly organized and operating under the laws of the State of New York and that it maintains a Police Department.

12. Deny the allegations set forth in paragraph “12” of the complaint.

13. Deny the allegations set forth in paragraph “13” of the complaint.

14. Deny the allegations set forth in paragraph “14” of the complaint.

15. Deny the allegations set forth in paragraph "15" of the complaint.

16. Deny the allegations set forth in paragraph "16" of the complaint.

17. Deny the allegations set forth in paragraph "17" of the complaint.

18. Deny the allegations set forth in paragraph "18" of the complaint.

19. Deny the allegations set forth in paragraph "19," except admit that plaintiff purports to proceed as stated therein.

20. In response to the allegations set forth in paragraph "20" of the complaint, defendants repeat and reallege paragraphs "1" through "19" of this answer as though fully set forth herein.

21. Deny the allegations set forth in paragraph "21" of the complaint.

22. Deny the allegations set forth in paragraph "22" of the complaint.

23. Deny the allegations set forth in paragraph "23" of the complaint.

24. Deny the allegations set forth in paragraph "24" of the complaint.

25. Deny the allegations set forth in paragraph "25" of the complaint.

26. Deny the allegations set forth in paragraph "26" of the complaint.

27. Deny the allegations set forth in paragraph "27" of the complaint, except admit that plaintiff purports to proceed as stated therein.

28. In response to the allegations set forth in paragraph "28" of the complaint, defendants repeat and reallege paragraphs "1" through "27" of this answer as though fully set forth herein.

29. Deny the allegations set forth in paragraph "29" of the complaint.

30. Deny the allegations set forth in paragraph "30" of the complaint.

31. Deny the allegations set forth in paragraph "31" of the complaint.

32. Deny the allegations set forth in paragraph “32” of the complaint, except admit that plaintiff purports to proceed as stated therein.

33. Deny the allegations set forth in paragraph “33” of the complaint, except admit that plaintiff purports to proceed as stated therein.

34. In response to the allegations set forth in paragraph “34” of the complaint, defendants repeat and reallege paragraphs “1” through “33” of this answer as though fully set forth herein.

35. Deny the allegations set forth in paragraph “35” of the complaint.

36. Deny the allegations set forth in paragraph “36” of the complaint.

37. Deny the allegations set forth in paragraph “37” of the complaint.

38. Deny the allegations set forth in paragraph “38” of the complaint, except admit that plaintiff purports to proceed as stated therein.

39. Paragraph “39” of the complaint sets forth a demand for a jury trial, rather than an averment of fact, and accordingly no response is required.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE:**

40. The complaint fails to state a claim upon which relief can be granted.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE:**

41. At all times relevant to the acts alleged in the complaint, defendant City of New York, its agents and officials, acted reasonably and properly in the lawful exercise of their discretion. Therefore, the City is entitled to governmental immunity from liability.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE:**

42. The plaintiff cannot obtain punitive damages as against the City of New York.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE:**

43. Defendants have not violated any rights, privileges or immunities under the Constitution or laws of the United States or the State of New York or any political subdivision thereof, nor has defendant violated any Act of Congress providing for the protection of civil rights.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE:**

44. Plaintiff's claims against the City of New York under state law are barred by the doctrine of immunity for judgmental errors in the exercise of governmental functions.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE:**

45. Plaintiff's state law claims may be barred for failure to comply with New York General Municipal Law §§ 50-e, h, and i.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE:**

46. Any injury alleged to have been sustained resulted from plaintiff's own culpable or negligent conduct or the culpable or negligent act of third parties and was not the proximate result of any act of the defendants.

**AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE:**

47. The individual defendants Santiago, Foley and Benson have not violated any clearly established constitutional or statutory right of which a reasonable person would have known and therefore are protected by qualified immunity.

**AS AND FOR A NINTH AFFIRMATIVE DEFENSE:**

48. There was probable cause to arrest and prosecute plaintiff.

**AS AND FOR A TENTH AFFIRMATIVE DEFENSE:**

49. This action is barred, in whole or in part, by the applicable statute of limitations.

**AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE:**

50. Plaintiff provoked any incidents.

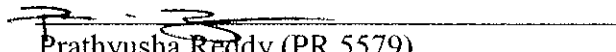
**AS AND FOR A TWELVTH AFFIRMATIVE DEFENSE:**

51. At all times relevant to the acts alleged in the complaint, defendants Santiago, Foley and Benson acted reasonably in the proper and lawful exercise of their discretion.

**WHEREFORE**, defendants request judgment dismissing the complaint in its entirety, together with the costs and disbursements of this action, and such other and further relief as the Court may deem just and proper.

Dated: New York, New York  
January 15, 2008

MICHAEL A. CARDOZO  
Corporation Counsel of the  
City of New York  
Attorney for Defendants City, Santiago, Foley and  
Benson  
New York, New York 10007  
(212) 788-0963

By:   
Prathyusha Reddy (PR 5579)  
Assistant Corporation Counsel  
Special Federal Litigation Division

TO: **By ECF and HAND**  
Edward Friedman, Esq.  
Attorney for Plaintiff  
26 Court Street, Suite 1903  
Brooklyn, NY 11242

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ANSWER	
<p><b>MICHAEL A. CARDOZO</b>  <i>Corporation Counsel of the City of New York</i>  <i>Attorney for Defendants City, Santiago, Foley</i>  <i>and Benson</i>  <i>100 Church Street</i>  <i>New York, New York 10007</i></p> <p><i>Of Counsel: Prathyusha Reddy</i>  <i>Tel: (212) 788-0963</i>  <i>NYCLIS No.</i></p>	
<p><i>Due and timely service is hereby admitted.</i></p> <p><i>New York, N.Y.</i>....., 200...</p> <p>..... <i>Esq.</i></p> <p><i>Attorney for</i> .....</p>	